

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

March 4, 2003

Docket No. 2003-129

PUBLIC UTILITIES COMMISSION  
Investigation of AT&T of New  
England, Inc. for Failure to Comply  
With Requirements of Chapter 140  
(Utility Service Area and  
Infrastructure Maps)

NOTICE OF INVESTIGATION  
AND CONTEMPT PROCEEDING;  
SHOW CAUSE ORDER

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Order, we commence an investigation into AT&T's noncompliance with Chapter 140 of the Commission's rules and contempt proceedings for failure to comply.

**II. BACKGROUND**

On October 19, 2001, the Commission adopted Chapter 140, Utility Service Area and Infrastructure Maps. Chapter 140 became effective on October 29, 2001. The Rule applies to public utilities in Maine, including all "interexchange carriers (IXCs) with facilities in Maine." Section 3(A) of Chapter 140 states that "All utilities subject to the requirements of this Chapter . . . with facilities in Maine must develop and maintain current maps showing the key infrastructure used or available for use by the utility for the production, transport, transmission, and distribution of services in Maine." Section 3(C) of the Rule requires utilities to file two copies of infrastructure maps with the Commission in paper form, and two copies in electronic form unless waived in advance by the Director of Technical Analysis for good cause shown. Section 3(F)(1) requires IXCs to file transmission infrastructure maps on July 1, 2002.

AT&T Communications of New England, Inc. (AT&T) is a public utility operating as an IXC with facilities in Maine pursuant to authority granted in Docket No. 89-375 (for interexchange service) and Docket No. 96-105 (for local exchange service). AT&T did not file maps required by Chapter 140 on July 1, 2002, has not yet filed that information, and has not requested a waiver of the requirements of the Commission's Rule. In addition, prior to the effective date of the Rule, AT&T failed to respond to prior requests by the Commission's Administrative Director in November 2000, and by the Commission's Director of

Technical Analysis in November 2001, for some of the information ultimately required by the Rule.<sup>1</sup>

On July 23, 2002, the Commission's Assistant Administrative Director sent a letter to utilities that had not made filings pursuant to Chapter 140, including AT&T, requiring that utilities explain their non-compliance with that Rule by August 16, 2002. AT&T did not respond to that letter

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<sup>1</sup> On November 17, 2000, the Commission's Administrative Director sent a letter to all public utilities with facilities in Maine directing them to file operational contingency and emergency plans and procedures, including "maps and diagrams that identify the location and function of all critical facilities and other key infrastructure in Maine." In November 2001, the Director of Technical Analysis sent a letter incorporating the same request to facilities-based Maine utilities, including AT&T, reminding facilities-based utilities that their infrastructure information should be filed "on a continuing basis" and that documents filed pursuant to that request would be protected pursuant to 35-A M.R.S.A. § 1311-B. Both letters asked utilities to provide contact information for utility personnel in the event of emergencies.

The Annual Report forms distributed by the Commission pursuant to 35-A M.R.S.A. § 504(2) also request certain supporting information on utility facilities within the state. AT&T's annual reports for calendar year 2001 filed with the Commission, for both its CLEC and its IXC operations in Maine, do not include the information requested.

AT&T provided limited information on its facilities in Maine to the Bureau of Information Services at its request in March 2002, and on March 15, 2002 the Commission Staff asked AT&T to expand on that information pursuant to the outstanding letter requests. AT&T's Legal and Government Affairs (LGA) group acknowledged that request on the same day. The Commission Staff contacted AT&T LGA in June to follow up on the earlier request, and the follow up request was acknowledged on June 11, 2002, when AT&T stated that "We are working on getting the information to you as soon as possible." On the same day, an AT&T engineer contacted the Commission Staff and asked for details about the information being requested, and the Staff faxed that information to AT&T and advised AT&T LGA of the contact. On July 24, 2002, the Commission Staff again contacted AT&T LGA stating that the information requested had not yet been filed. On the following day, AT&T LGA advised that AT&T was setting up a conference call to discuss AT&T's providing infrastructure information to the Commission. Staff received no further communications until Staff initiated a call on August 1, 2002.

On August 1, 2002, AT&T personnel and three members of the Commission Staff (Peter Ballou, Joe Sukaskas, and Doug Cowie) participated in a conference call during which the Staff reminded AT&T that it was in violation of Chapter 140's requirement to file infrastructure information by July 1, 2002.<sup>2</sup> AT&T personnel on the call advised the Commission Staff that AT&T had reservations about filing its infrastructure information with the Commission, inviting the Commission Staff to tour AT&T facilities in New Jersey as a substitute for filing the information. AT&T said that it would make a filing related to the Chapter 140 requirement shortly.<sup>3</sup>

On September 24, 2002, Joe Sukaskas of the Commission Staff attended a Telecommunications Emergency Response Training Seminar in Massachusetts, where he met one of the AT&T personnel involved in the August 1, 2002 conference call, Mr. Harry Underhill. Mr. Underhill advised Mr. Sukaskas that AT&T had determined that its infrastructure information would be compromised if it were to be filed in 50 locations around the country. Mr. Sukaskas reminded Mr. Underhill that the Commission had not yet received AT&T's written response regarding its non-compliance with Chapter 140.

### III. DECISION

The Commission has not received any of the required information, nor any request for waiver of the applicable filing requirements, nor any request for extension in time to prepare or file such information, from AT&T. AT&T is in violation of Chapter 140 of the Commission's Rules.

Accordingly,

1. We commence an investigation, pursuant to 35-A M.R.S.A. § 1303 into AT&T's failure to comply with the requirements of Chapter 140 of the Commission's Rules.

2. We commence contempt proceedings pursuant to 35-A M.R.S.A. § 1502, which states: "Every public utility or person that fails to comply with a...rule...of the commission...is in contempt and shall be punished by the commission for contempt in the same manner as contempt is punished by courts of record."

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<sup>2</sup> The Staff also advised the AT&T participants that the Commission had not yet received the contact information requested in November 2000 and again in November 2001.

<sup>3</sup> AT&T LGA stated that the contact information requested in the November 2000 and November 2001 requests would be provided shortly after the call. No such information has yet been received.

3. Within 21 days after the issuance of this Notice, AT&T shall file an answer to the allegations in the Notice and shall show cause why it should not be held in contempt.

Dated at Augusta, Maine, this 4<sup>th</sup> day of March, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond